UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MEL THOMPSON,	:	
Plaintiff,	:	Civil Action No. 3:05 CV 1493 (CFD)
	:	
v.	:	
	:	
AMERICAN BAR ASSOCIATION ET AL.,	:	
	:	
Defendants.	:	

RULING ON DEFENDANTS' MOTION TO DISMISS AND PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Mel Thompson brought this action against the State of Connecticut, the Connecticut Bar Examining Committee ("CBEC"), and the Connecticut Statewide Grievance Committee ("SWGC") on the ground that these defendants have prevented him from taking the Connecticut Bar Examination ("exam") in violation of the U.S. Constitution.[1] Although he has not yet applied to take the exam, Thompson claims that the rules governing qualifications to take the exam prevent him from doing so because he graduated from an internet correspondence law school. This prohibition, he claims, violates his equal protection and due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. He also claims that the Connecticut statute prohibiting the unauthorized practice of law, Conn. Gen. Stat. § 51-88, is unconstitutionally vague. Thompson seeks declaratory and injunctive relief for his claims. The

[1]Thompson also initially named the American Bar Association, the Law School Admission Council, Inc., Massachusetts School of Law at Andover, Inc., Quinnipiac University School of Law, Southern New England School of Law, University of Connecticut School of Law, and Yale University School of Law as defendants, but he later voluntarily dismissed them from the suit.

defendants moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Thompson moved twice for summary judgment pursuant to Rule 56(a). For the following reasons the defendants' motion to dismiss is granted and Thompson's motions for summary judgment are denied as moot.

I. Background[2]

This case primarily concerns a challenge to the Connecticut Bar Examining Committee's policies concerning eligibility for taking the Connecticut Bar Examination.

Mel Thompson received a bachelor's degree in Political Science from Southern Connecticut State University ("SCSU") in 1988, and he obtained a master's degree, also in political science, from SCSU in 1997. Thompson enrolled in Massachusetts School of Law ("MSL") in 1998 but soon withdrew for financial reasons. In 2002 he enrolled in William Howard Taft University, an internet correspondence law school based in California. Thompson subsequently transferred to West Coast School of Law ("West Coast"), a different internet correspondence school, also based in California, in 2003. Thompson graduated with a juris doctor degree from West Coast in 2005. He now seeks permission to sit for the Connecticut bar exam.

Section 2 of the Connecticut Practice Book[3] governs attorney admissions to the Connecticut bar. Sections 2-3 and 2-4 give CBEC the authority to implement rules and regulations governing Connecticut bar admissions. With the exception of applicants who are

[2]The following information is taken from the parties' pleadings, briefs on the motion to dismiss, and applicable statutes. It is undisputed unless otherwise indicated.

[3]The Connecticut Practice Book provides the rules of practice and procedure before the Connecticut Superior Court.

already admitted to practice law in other jurisdictions, all applicants for admission must pass the Connecticut bar exam, which is administered by CBEC. Practice Book § 2–8(6). CBEC will not permit an applicant to sit for the exam, however, unless the applicant's legal education satisfies the requirements set forth in Practice Book § 2-8(4): each applicant must have either (1) received a bachelor of laws[4] degree (or equivalent degree) from a law school approved by CBEC, or (2) obtained an advanced legal degree acceptable to CBEC, at a school approved by CBEC, after receiving a bachelor of laws degree (or equivalent degree) at a non-approved law school, but with CBEC approval of the course of study. Practice Book § 2-8(4). This means that an applicant may sit for the bar under two circumstances. An applicant may take the test if he attended a law school approved by CBEC. Alternatively, an applicant may sit for the exam if he obtains special approval of his primary legal education from CBEC, even though his law school was not approved by CBEC, and then he also obtains an advanced legal degree from a school approved by CBEC.

The difference between law schools that are approved by CBEC and legal education that is acceptable to CBEC is significant. CBEC maintains a list of approved law schools; all schools accredited by the American Bar Association ("ABA") are included on the list. Non-ABA accredited law schools, however, may also be included on the list if the school petitions CBEC for approval pursuant to CBEC's Regulations, Article II-1(B). Currently, CBEC's approved list of law schools includes two non-ABA accredited schools: Southern New England School of Law ("SNESL") and MSL, the law school Thompson initially attended. No other non-ABA accredited law schools are on CBEC's approved list.

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[4]This is now known as J.D. ("Juris Doctorate").

Even if an applicant did not attend a law school on the approved list, his legal education may still be acceptable to CBEC. CBEC will review the legal education of applicants from non-CBEC approved schools on a case-by-case basis. The applicant seeking review must submit an Evaluation Petition to CBEC that CBEC will either accept or reject. As explained above, if an applicant's initial legal education is acceptable to CBEC, and the applicant also completes post-graduate work acceptable to CBEC at a school approved by CBEC, then the applicant may take the bar exam.

West Coast, the school from which Thompson graduated, is not on CBEC's approved list of schools, because West Coast is not ABA-accredited and it has not sought approval from CBEC in accordance with Article II-1(B) of CBEC's Regulations. Because of this, to be eligible to sit for the Connecticut bar Thompson must first obtain individualized approval of his West Coast education from CBEC through the Evaluation Petition process. Then, after he receives such approval, he must obtain an advanced legal degree from a CBEC-approved school.

Despite Thompson's wish to take the exam after he attended a non-CBEC approved school, however, he never filed an Evaluation Petition. Thompson claims this is because his petition would be futile, in light of the following statement in the section of CBEC's website that explains the Evaluation Petition process:

> To qualify for admission you must have received your law degree from a law school which, at the time you received your degree, was approved by the Bar Examining Committee. If you do not meet this requirement you may be eligible to sit for the Connecticut bar examination if:
> - Your credentials leading to the granting of your law degree are approved by the Bar Examining Committee (note: correspondence and internet law school work will NOT be approved) AND
> - You obtain a Master of Laws degree (LLM) from a law school approved by the Bar Examining committee. You are strongly advised to obtain approval from the

Bar Examining Committee before your pursue an LLM degree.

Connecticut Bar Examining Committee, U.S. Non-approved Legal Education Petition, at http://www.jud.state.ct.us/CBEC/nonapproved.htm (emphasis in original) (last visited March 29, 2007). Thompson claims that because of this statement, any petition he makes to CBEC for approval of his West Coast education would be automatically rejected, because the statement expresses CBEC's policy of automatically rejecting petitions from internet law school graduates. Thompson now alleges that this policy, which renders him ineligible to sit for the Connecticut bar exam, violates his Fourteenth Amendment right to equal protection and his Fifth and Fourteenth Amendment due process rights.

In addition to challenging CBEC's policy, Thompson also claims that Conn. Gen. Stat. § 51-88, which prohibits the unauthorized practice of law, is unconstitutionally vague. Thompson compares himself, as an internet law school graduate, with law student interns. Thompson alleges that if he, an internet law school graduate, were to practice law in Connecticut he would be subject to prosecution under Conn. Gen. Stat. § 51-88, but law student interns frequently practice law and are not subject to such prosecution. Thompson claims that is an uneven application of the statute, and so it is unconstitutionally vague. Thompson replicates this allegation against SWGC[5] on the basis that SWGC would investigate a claim of the unauthorized practice of law by an internet law school graduate, but SWGC would not conduct a similar

[5]SWGC is a committee of fourteen lawyers and seven non-lawyers appointed by the judges of the Connecticut Superior Court "to review, investigate and adjudicate attorney ethics matters . . . to assist the Superior Court in maintaining the integrity of the bar of the State of Connecticut." Statewide Grievance Committee, Statewide Bar Council, at http://www.jud.state.ct.us/SGC/default.htm (last visited March 26, 2007). SWGC enforces Conn. Gen. Stat. § 51-88.

investigation into a law student intern.

II. Legal Standard

A motion to dismiss for lack of subject matter jurisdiction is governed by Federal Rule of Civil Procedure 12(b)(1). Under that rule, a case is properly dismissed "when the court lacks the statutory or constitutional power to adjudicate the case." Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1187 (2d Cir. 1996).

A district court evaluating a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) "must look to the way the complaint is drawn to see if it claims a right to recover under the laws of the United States." IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1055 (2d Cir. 1993) (quoting Goldman v. Gallant Secs. Inc., 878 F.2d 71, 73 (2d Cir. 1989)), cert. denied, 513 U.S. 822 (1994). As with a motion to dismiss pursuant to Rule 12(b)(6), "the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of [the] plaintiff." Raila v. United States, 355 F.3d 118, 119 (2d Cir. 2004); see Lerner v. Fleet Bank, N.A., 318 F.3d 113, 128 (2d Cir. 2003), cert. denied, 540 U.S. 1012 (2003) (noting that "[t]he standards for dismissal under Rules 12(b)(1) and 12(b)(6) are substantially identical"). "Dismissal is inappropriate unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him or her to relief." Raila, 355 F.2d at 119. Both the moving and non-moving parties "may use affidavits and other materials beyond the pleadings themselves in support of or in opposition to a challenge to subject matter jurisdiction." Matos v. United States Dept. of Housing & Urban Dev., 995 F. Supp. 48, 49 (D. Conn. 1997) (citing Land v. Dollar, 330 U.S. 731, 735 (1947)). The district court also "may inquire, by affidavits or otherwise, into the facts as they exist." Land, 330 U.S. at 735 n.4; see also Exchange Nat'l Bank v. Touche Ross &

Co., 544 F.2d 1126, 1130-31 (2d Cir. 1976).

Since Thompson is proceeding *pro se*, the Court must apply "less stringent standards" to his submissions than to "formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court will also "interpret [his papers] to raise the strongest arguments that they suggest." Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). When faced with a motion to dismiss a *pro se* complaint, a district court "must construe the complaint broadly, and interpret it to raise the strongest arguments that it suggests." Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000). The proper inquiry is "not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." Twombly v. Bell Atl. Corp., 425 F.3d 99, 106 (2d Cir. 2005).

III. Discussion

A. Eleventh Amendment Immunity

As a preliminary matter, the defendants argue that they are immune to suit by Thompson. Thompson's amended complaint asserted all of his claims against the state of Connecticut and state agencies. For purposes of application of the Eleventh Amendment, state agencies are considered part of the state. Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 50, 52 (1994). A state cannot be sued in federal court unless it is pursuant to a cause of action established through Congress's power to abrogate Eleventh Amendment immunity. Regents of Univ. of California v. Doe, 519 U.S. 425 (1997). The Supreme Court has specifically held that 42 U.S.C. § 1983, the vehicle through which a plaintiff may sue a state for violations of his constitutional rights, does not abrogate such immunity. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99 (1984) (discussing Quern v. Jordan, 440 U.S. 332 (1979)). Because of this, the defendants

argue, Thompson's constitutional claims are improperly asserted against these defendants and must be dismissed.

Subsequent to the defendants' filing of their motion to dismiss, Thompson made an unopposed motion to amend his complaint [docket # 72] to name M. Jodi Rell, the Governor of Connecticut, Raymond W. Beckwith, the chairman of CBEC, R. David Stamm, the administrative director of CBEC, and Salvatore C. DePiano, the chairman of SWGC, as defendants in their official capacities. The Court granted Thompson's motion [docket # 75]. Because the defendants now include state officials sued in their official capacities for declaratory and injunctive relief, which the Eleventh Amendment permits, the defendants' argument for dismissal on the ground of immunity is moot. Idaho v. Coeur D'Alene Tribe of Idaho, 521 U.S. 261, 269 (1997) (re-affirming that this exception to immunity is well-established); Ex parte Young, 209 U.S. 123, 159-60 (1908).

B. Justiciability

The defendants argue that three of Thompson's claims must be dismissed for lack of standing. To have standing under Article III of the U.S. Constitution, a plaintiff must show: (1) he suffered an injury in fact, (2) there is a causal connection between the injury and the defendant's conduct, and (3) his injury is redressable by a decision of the court. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). These three elements ensure that Article III's "cases" and "controversies" requirement is satisfied in all federal cases. Baur v. Veneman, 352 F.3d 625, 631 (2d Cir. 2003). When faced with a motion to dismiss, a plaintiff bears the burden of pleading facts that, if true, would establish standing for each of his claims. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 190 (2000). If any of these three

elements are not satisfied for a particular claim, the claim must be dismissed. See DaimlerChrysler Corp. v. Cuno, 126 S.Ct. 1854, 1861 (2006); Bennett v. Spear, 520 U.S. 154, 167 (1997). The defendants contend that three of Thompson's claims fail at this stage because he did not plead any injury in fact.

A plaintiff's injury qualifies as a "constitutionally sufficient injury-in-fact" when "the asserted injury [is] 'concrete and particularized' as well as 'actual or imminent,' not 'conjectural' or 'hypothetical.'" Baur, 352 F.3d at 632 (quoting Lujan, 504 U.S. at 560). This requirement of a particularized harm ensures that the plaintiff has a personal stake in the outcome of the lawsuit and prevents federal courts from serving as "merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding." Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 473 (1982). Additionally, the requirement "recognizes that if an injury is too abstract, the plaintiff's claim may not be capable of, or otherwise suitable for, judicial resolution. Baur, 352 F.3d at 632 (citing Raines v. Byrd, 521 U.S. 811, 819 (1997)). In light of these constitutional concerns, "[t]o support standing, the plaintiff's injury must be actual or imminent to ensure that the court avoids deciding a purely hypothetical case in which the projected harm may ultimately fail to occur." Id. (citing Lujan, 504 U.S. at 564-65 n.2).

1. Justiciability of Thompson's Challenge to CBEC's Implementation of Practice Book § 2-8(4)

Thompson's complaint asserts that CBEC's decision to unconditionally deny internet law school graduates permission to take the bar, as expressed on CBEC's website, constitutes an unconstitutional implementation of Practice Book § 2-8(4). The defendants argue that Thompson

lacks standing to bring this challenge because he did not suffer an injury in fact: since Thompson never petitioned CBEC for approval of his legal education, CBEC never rejected his petition, and so CBEC's enforcement of Practice Book § 2-8(4) never injured him. The defendants also argue that the claim is not ripe for review.

Thompson contends that he is sufficiently injured by the statement on CBEC's website. Thompson points out that his submission of an Evaluation Petition to CBEC would be futile in light of the statement. Since it is certain that CBEC would reject any petition from an internet law school graduate, Thompson argues, he need not submit a petition to establish a concrete injury in fact.

The Court concludes that Thompson has not pled a sufficiently "concrete and particularized" injury in fact. While the outcome of CBEC's review of Thompson's petition may appear to be predetermined by the language concerning internet law school education on CBEC's website, any decision by CBEC is appealable to the Connecticut Superior Court. Scott v. State Bar Examining Comm., 601 A.2d 1021, 1030 (Conn. 1992). Moreover, the legal significance of this statement on CBEC's website is uncertain.[6] Thompson does not claim that Practice Book § 2-8(4) or CBEC's official regulations prohibit CBEC from approving internet law school education for all applications; rather, Thompson alleges only that submitting a petition is futile in light of the website's statement. However, the policy-making power vested in CBEC, including CBEC's power to promulgate regulations, is limited by the Practice Book provisions governing bar admissions. Practice Book § 2-4 (stating that CBEC may only promulgate regulations "not

[6]This fact also provides an alternative basis for the Court to abstain from deciding the case at this time pursuant to Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941), which is discussed in Part III-D, infra.

inconsistent" with the Practice Book and establishing that CBEC's regulations "shall at all times be subject to amendment or revision by . . . the judges of the superior court"). Although CBEC has broad discretion, it "act[s] under the [superior] court's supervision," and the Superior Court, not CBEC, "has the ultimate power" over Connecticut bar admissions. Scott, 601 A.2d at 1024, 1030 (citing In re Application of Dodd, 43 A.2d 224 (Conn. 1945)); Heiberger v. Clark, 169 A.2d 652, 656 (Conn. 1961) ("Fixing the qualifications for . . . the practice of law in this state has ever been an exercise of judicial power."); see Practice Book §§ 2-3, 2-4; Scott, 601 A.2d at 1026 (noting that the Superior Court reviews CBEC's decisions similarly to that of an administrative agency). Given these constraints on CBEC, it is not only uncertain whether the Superior Court would approve CBEC's apparent policy of automatically rejecting internet law school graduates' petitions only on the basis of a statement on CBEC's website, but it is also uncertain whether this is indeed the policy of CBEC as it is not set forth in any CBEC regulation.[7] Until CBEC and the Superior Court clarify the significance of the website's statement, Thompson's injury here remains hypothetical.[8]

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[7]The CBEC regulations do not include any provisions concerning the "Evaluation Petition" method for taking the bar examination, nor do they contain provisions concerning the role of their regulations or how they are adopted. See Connecticut Bar Examining Committee Regulations (2007), available at http://www.jud.state.ct.us/CBEC/regs.htm. However, Practice Book § 2-4 indicates that CBEC should carry out the Practice Book rules governing bar admissions by promulgating regulations. Practice Book § 2-4. Whether internet law school graduates may take the bar exam could very well be the type of policy question that should be addressed by the regulations; at the least, the authority for the statement on the website could be clarified or explained.

[8]Although the Court recognizes that, as a § 1983 plaintiff, Thompson is not required to exhaust his administrative remedies, Patsy v. Board of Regents, 457 U.S. 496, 516 (1982); Roach v. Morse, 440 F.3d 53, 56 (2d Cir. 2006), the fact that the Connecticut courts may review—and reverse—CBEC's decision renders Thompson's claim of futility far less certain, and significantly increases the likelihood that the injury he foresees is merely conjectural.

Additionally, the Court finds that Thompson's speculative injury renders the case unripe for judicial review. Ripeness concerns whether a claim should be dismissed as premature.[9] See United States v. Fell, 360 F.3d 135, 139 (2d Cir. 2004). The ripeness doctrine "ensur[es] that a dispute has generated injury significant enough to satisfy the case or controversy requirement of Article III . . . by preventing a federal court from entangling itself in abstract disagreements over matters that are premature for review because the injury is merely speculative and may never occur." Id. (citation and quotation marks omitted). Courts assessing ripeness must consider two factors: "the fitness of the issues for judicial decision," and "the hardship to the parties of withholding court consideration." Abbott Labs. v. Gardner, 389 U.S. 136, 149 (1967). The hardship a plaintiff will suffer due to dismissal must be substantial; if the likelihood of harm is merely speculative this standard is not met. See Reno v. Catholic Social Servs., 509 U.S. 43, 57-58, 66 (1993). With regard to fitness, while a court may be able to decide questions of law on a less developed factual record, if "further factual development would 'significantly advance [the court's] ability to deal with the legal issues presented,'" then the claim is not fit for judicial review. National Park Hospitality Ass'n v. Dep't of Interior, 538 U.S. 803, 812 (2003) (quoting Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 82 (1978)). Here, Thompson's claim raises serious fitness concerns without similarly substantial hardship concerns. So long as the final outcome of Thompson's petition to approve his legal education remains unknown, it will be difficult for the Court to determine whether CBEC's implementation of the

[9]Although ripeness presents a separate justiciability question from standing, the two doctrines overlap in that both require the plaintiff to have sustained an injury in fact. See Erwin Chemerinsky, Federal Jurisdiction, § 2-4 at 114 (4th ed. 2003). As with standing, an injury in fact is a constitutional requirement for a case to be ripe for review. See id.

Practice Book, in light of the statement on its website, violates Thompson's constitutional rights. At the same time, Thompson will not suffer substantial hardship if the Court dismisses his case, because even a favorable ruling on this claim would not give Thompson the relief he ultimately seeks. Even if this Court found it unconstitutional for CBEC to automatically reject internet law school graduates, since Thompson graduated from a non-CBEC approved law school, he must still obtain CBEC's approval of his legal education under Practice Book 2-8(4) to be eligible to take the bar exam. Since Thompson must ultimately obtain CBEC's approval, requiring him to petition CBEC now presents no substantial hardship to him that outweighs the risks inherent in an otherwise premature review of this claim.

Accordingly, the Court finds that Thompson lacks standing to challenge CBEC's implementation of Practice Book § 2-8(4), and also that this claim is not ripe for review.

2. Standing to Challenge CBEC Regulation Art. II-1(B)

Thompson's complaint could also be read to allege that CBEC's Regulation Art. II-1(B), which sets the criteria for law schools seeking approval by CBEC, violates his constitutional rights. As explained above, graduates of law schools approved by CBEC may sit for the bar exam without petitioning CBEC for individualized approval or pursuing post-graduate legal education. See Practice Book § 2-8(4). All ABA-accredited schools are approved by CBEC. Connecticut Bar Examining Committee Regulations, Art II-1(A) (2007), available at http://www.jud.state.ct.us/CBEC/regs.htm#II. In addition, a non-ABA accredited law school may petition CBEC for approval in accordance with CBEC Regulation Art. II-1(B). The criteria CBEC considers in deciding whether to grant a law school's petition include whether the school previously sought and was denied ABA accreditation, whether the school is licensed and

approved within the state in which it is located, the types of courses the school offers on subjects tested on the Connecticut bar exam, the school's available courses on legal writing, whether the school requires courses in legal ethics and professional responsibility, the school's bar passage rates, and the school's anti-discrimination policy. CBEC Regulation Art. II-1(B)(i)-(x). The Regulation specifically provides that only law schools, and not individual bar applicants, may petition CBEC to include the law school on CBEC's approved list of schools. CBEC Regulation Art. II-1(B).

To the extent that Thompson challenges the constitutionality of CBEC Regulation Article II-1(B) on behalf of his law school, his claim is dismissed for lack of standing. West Coast is not a party to this lawsuit. An individual "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights and interests of third parties." Kowalski v. Tesmer, 543 U.S. 125, 129 (2004) (quoting Warth v. Seldin, 422 U.S. 490, 499 (1975)). A plaintiff may assert the rights of third parties only when two criteria are met: (1) the plaintiff and the third party have a "close" relationship, and (2) when the third party faces obstacles in asserting its own rights. Id. (quoting Powers v. Ohio, 499 U.S. 400, 411 (1991)). As Thompson did not include any allegations in his complaint addressing these two requirements, he lacks third party standing to bring any claims asserting West Coast's rights.[10] Consequently, the defendants' motion to dismiss Thompson's challenge to CBEC's Regulation Art II-1(B) is granted.

3. Standing to Challenge SWGC's Enforcement of Conn. Gen. Stat. § 51-88

Thompson's challenge to Conn. Gen. Stat. § 51-88, which prohibits the unauthorized

[10]The Court also notes that Thompson has pled no facts that could give rise to a concrete injury in fact for West Coast's claim, because it appears that West Coast never applied to be included on CBEC's list of approved schools.

practice of law, seems to include a challenge to SWGC's enforcement of the statute. Thompson alleges that he is harmed by SWGC's failure to prosecute law student interns who provide legal services in Connecticut for the unauthorized practice of law. This claim also fails for lack of standing, because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Friends of the Earth, 528 U.S. at 203 (quoting Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973)). To the extent that Thompson's challenge to Conn. Gen. Stat. § 51-88 challenges SWGC's non-prosecution of legal interns, the defendants' motion to dismiss is granted.

C. Thompson's Vagueness Challenge to Conn. Gen. Stat. § 51-88

Thompson challenges Conn. Gen. Stat. § 51-88, which prohibits the unauthorized practice of law, as unconstitutionally vague. Thompson claims that the statute is vague because he, as an internet law school graduate, could be prosecuted for the unauthorized practice of law, while law student interns are not be subject to prosecution. Since Thompson takes issue with the enforcement of the statute, rather than its language, the Court approaches Thompson's claim as an "as-applied" vagueness challenge.

Courts must analyze constitutional "as applied" vagueness challenges under a two-part test. First, the court "must determine 'whether the statute gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" Farrell v. Burke, 449 F.3d 470, 486 (2d Cir. 2006) (quoting United States v. Nadi, 996 F.2d 548, 550 (2d Cir. 1993)). Then, the court should assess "'whether the law provides explicit standards for those who apply it.'" Id. (quoting Nadi, 996 F.2d at 550). With regard to the second prong of this test, even if a statute does not provide sufficient general guidance to those who enforce it, an as-applied vagueness challenge

will still be unsuccessful if "the conduct at issue falls so squarely in the core of what is prohibited by the law that there is no substantial concern about arbitrary enforcement." Id. at 494; Nadi, 996 F.2d at 550 ("Because the statute is judged on an as applied basis, one whose conduct is clearly proscribed by the statute cannot successfully challenge it for vagueness.").

Connecticut General Statute § 51-88 provides that:

> (a) A person who has not been admitted as an attorney under the provisions of section 51-80 shall not: (1) Practice law or appear as an attorney-at-law for another, in any court of record in this state, (2) make it a business to practice law, or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he is a legal practitioner of law, or (7) advertise that he, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.
>
> (b) Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his employment, renders legal advice to his employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his employer, but does not include an independent contractor.
>
> (c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.
>
> (d) The provisions of this section shall not be construed as prohibiting: (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office; (2) any person from practicing law or pleading

> at the bar of any court of this state in his own cause; (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or (B) an officer subject to impeachment pursuant to said Article Ninth.

Conn. Gen. Stat. § 51-88. In addition, the Court takes judicial notice of Practice Book sections 3-14 to 3-21, which establish the rules that govern legal interns' practice of law in Connecticut. Among many restrictions, legal interns representing clients must submit to full supervision by a licensed attorney at all times. Practice Book § 3-15. Practice Book § 3-20 specifically provides that non-compliance with the rules governing legal interns—including the supervision requirement—leaves legal interns open to prosecution for the unauthorized practice of law. Practice Book § 3-20 ("Nothing contained in these rules . . . shall enlarge the rights of persons, not members of the bar or legal interns covered by these rules, to engage in activities customarily considered to be the practice of law.").

In light of the clearly defined status afforded to legal interns working under the Practice Book's rules, Thompson's vagueness challenge fails as a matter of law. Thompson's complaint reveals that he seeks the full privileges of licensed attorneys admitted to the bar, not the opportunity to work as an intern under the supervision of other lawyers. Because of this, Thompson's claim meets neither prong of the vagueness test. The statute clearly conveys that the practice of law in Connecticut by anyone, including a non-supervised legal intern, without being admitted to bar, would violate Conn. Gen. Stat. § 51-88. The practice of law by non-admitted attorneys and non-supervised legal interns also "falls so squarely in the core of what is prohibited

by the law that there is no substantial concern about arbitrary enforcement." Farrell, 449 F.3d at 494. Accordingly, Thompson's vagueness challenge is dismissed.[11]

D. Abstention

As an alternative to dismissing Thompson's constitutional challenge to CBEC's implementation of Practice Book § 2-8(4) for lack of standing or ripeness, the defendants argue that this Court should abstain from ruling on the claim pursuant to Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941). The defendants argue that since the legal significance of the statement on CBEC's website presents an unsettled question of state law, Pullman abstention is appropriate.

A federal court should abstain from deciding unsettled questions of state law that must be resolved before the court can address a federal constitutional question. Pullman, 312 U.S. at 500. "By abstaining in such cases, federal courts will avoid both unnecessary adjudication of federal questions and needless friction with state policies." Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 236 (1984) (citation and quotation marks omitted). Abstention based on this doctrine "'involves an inquiry focused on the possibility that the state courts may interpret a challenged state statute so as to eliminate, or at least to alter materially, the constitutional question presented.'" Planned Parenthood of Dutchess-Ulster, Inc. v. Steinhaus, 60 F.3d 122, 126 (2d Cir. 1995) (quoting Ohio Bureau of Employment Servs. v. Hodory, 431 U.S. 471, 477 (1977)); see San Remo Hotel, L.P. v. City & County of San Francisco, 545 U.S. 323, 339 (2005) ("[T]he purpose of Pullman abstention . . . is to avoid resolving the federal question by encouraging a state-law determination that may

[11]The Court also notes that Conn. Gen. Stat. § 51-88 has survived two previous vagueness challenges. Statewide Grievance Comm. v. Patton, 683 A.2d 1359 (Conn. 1996); Grievance Comm. of the Bar of Fairfield County v. Dacey, 222 A.2d 339 (Conn. 1966).

moot the federal controversy."). Because of this underlying concern, Pullman abstention is appropriate only when three criteria are established: "(1) an unclear state statute or uncertain state law issue; (2) determination of the federal issue turns upon resolution of the unclear state law provision; and (3) the state law provision is susceptible to an interpretation that would avoid or modify the federal constitutional question presented." Id.; see Hawaii Hous. Auth., 467 U.S. at 236 (holding that courts should abstain under Pullman only when the state statute is "fairly subject to an interpretation which will render unnecessary adjudication of the constitutional question" (quotation marks omitted)).

The Court agrees that if Thompson's challenge to CBEC's implementation of Practice Book § 2-8(4) did not suffer fatal standing and ripeness defects, Pullman abstention would be proper for that claim. Assuming that Thompson had stated an injury in fact, this case would meet all three of the necessary Pullman criteria. First, as discussed in Part III-B-1, supra, the legal significance of the statement on CBEC's website's rejecting internet legal education presents an uncertain question of state law. Second, Thompson's constitutional challenge to CBEC's implementation of Practice Book 2-8(4) depends on the legal significance of the website's statement; without knowing whether CBEC may use the website's statement as its official policy in administering the rules governing bar admissions, the contours of the constitutional challenge to CBEC's actions are not clearly defined. Finally, if the Connecticut courts determine that CBEC may not use such a policy to automatically reject internet law school graduates from taking the bar, then Thompson's constitutional claim will be moot. The Connecticut courts are the proper forum to first determine the correct degree of legal import, if any, that must be given to the statement on CBEC's website. Because the Connecticut courts' resolution of this question could

render a constitutional decision in this Court unnecessary, this Court would exercise its discretion to abstain from presently deciding Thompson's challenge to CBEC's implementation of Practice Book § 2-8(4) under Pullman.[12] However, since the Court concludes that Thompson has not pled a sufficient injury in fact for this claim, the Court dismisses it for lack of standing and ripeness instead of staying the action.

IV. Conclusion

For the reasons given above, the defendants' motion to dismiss [docket # 43] is granted. The plaintiff's motions for summary judgment [docket #s 58, 60] are denied as moot. Judgment is entered for the defendants, and the clerk is ordered to close this case.

SO ORDERED this 30th day of March 2007, at Hartford, Connecticut.

/s/ Christopher F. Droney
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[12]If this Court abstained under Pullman the Court would retain jurisdiction over the action until the state law question is resolved. See Am. Trial Lawyers Ass'n, New Jersey Branch v. New Jersey Supreme Court, 409 U.S. 467, 469 (1973) ("The proper course is for the District Court to retain jurisdiction pending the proceedings in the state courts."). Such abstention would not force Thompson to litigate his federal constitutional claims in state court, with federal review available only through appeal to the U.S. Supreme Court. England v. Louisiana State Bd. of Med. Exam'rs, 375 U.S. 411, 417-22 (1964) (establishing procedures to ensure litigants subjected to Pullman abstention may litigate federal questions in federal court); see San Remo Hotel, 545 U.S. at 339-340.